



House of Representatives

General Assembly

File No. 556

February Session, 2008

Substitute House Bill No. 5933

House of Representatives, April 9, 2008

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE COMPENSATION OF WRONGFULLY CONVICTED AND INCARCERATED PERSONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) A person is eligible to
2 receive compensation for wrongful incarceration if:

3 (1) Such person has been convicted by this state of one or more
4 crimes, of which the person was innocent, has been sentenced to a term
5 of imprisonment for such crime or crimes and has served all or part of
6 such sentence; and

7 (2) Such person's conviction was vacated or reversed and the
8 complaint or information dismissed on grounds of innocence, or the
9 complaint or information dismissed on a ground consistent with
10 innocence.

11 (b) A person who meets the eligibility requirements of subsection (a)
12 of this section may present a claim against the state for such
13 compensation with the Claims Commissioner in accordance with the
14 provisions of chapter 53 of the general statutes. The provisions of said

15 chapter shall be applicable to the presentment, hearing and
16 determination of such claim except as otherwise provided in this
17 section.

18 (c) At the hearing on such claim, such person shall have the burden
19 of establishing by a preponderance of the evidence that such person
20 meets the eligibility requirements of subsection (a) of this section. In
21 addition, such person shall present evidence as to the damages
22 suffered by such person which may include, but are not limited to,
23 claims for loss of liberty and enjoyment of life, loss of earnings, loss of
24 earning capacity, loss of familial relationships, loss of reputation,
25 physical pain and suffering, mental pain and suffering and attorney's
26 fees and other expenses arising from or related to such person's arrest,
27 prosecution, conviction and incarceration.

28 (d) If the Claims Commissioner determines that such person has
29 established such person's eligibility under subsection (a) of this section
30 by a preponderance of the evidence, the Claims Commissioner shall
31 order the immediate payment to such person of compensation for such
32 wrongful incarceration. In determining the amount of such
33 compensation, the Claims Commissioner shall consider relevant
34 factors including, but not limited to, the evidence presented by the
35 person under subsection (c) of this section as to the damages suffered
36 by such person and whether any negligence or misconduct by any
37 officer, agent, employee or official of the state or any political
38 subdivision of the state contributed to such person's arrest,
39 prosecution, conviction or incarceration.

40 (e) In addition to the compensation paid under subsection (d) of this
41 section, the Claims Commissioner may order payment for the expenses
42 of employment training and counseling, tuition and fees at any
43 constituent unit of the state system of higher education and any other
44 services such person may need to facilitate such person's reintegration
45 into the community.

46 (f) Any person claiming compensation under this section based on a
47 pardon that was granted or the dismissal of a complaint or information

48 that occurred before the effective date of this section shall file such
 49 claim not later than two years after the effective date of this section.
 50 Any person claiming compensation under this section based on a
 51 pardon that was granted or the dismissal of a complaint that occurred
 52 on or after the effective date of this section shall file such claim not
 53 later than two years after the date of such pardon or dismissal.

54 (g) Nothing in this section shall be construed to prevent such person
 55 from pursuing any other action or remedy at law or in equity that such
 56 person may have against the state and any political subdivision of the
 57 state and any officer, agent, employee or official thereof arising out of
 58 such wrongful conviction and incarceration.

59 Sec. 2. (*Effective from passage*) (a) The advisory commission on
 60 wrongful convictions established pursuant to section 54-102pp of the
 61 general statutes shall monitor and evaluate the implementation of (1)
 62 the procedure for the compensation of wrongfully incarcerated
 63 persons established under section 1 of this act, (2) the pilot program to
 64 electronically record the interrogations of arrested persons, and (3)
 65 eyewitness identification procedures that, when practicable, use a
 66 double-blind administration wherein the person conducting the
 67 identification procedure is not aware of which person in the photo
 68 lineup or live lineup is suspected as being the perpetrator of the crime.

69 (b) Not later than January 7, 2009, the advisory commission shall
 70 report its findings and recommendations to the joint standing
 71 committee of the General Assembly on judiciary in accordance with
 72 section 11-4a of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>from passage</i>	New section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Comptroller - Adjudicated Claims Account	GF - Cost	Potential Significant	Potential Significant
Judicial Dept.	GF - Cost	Minimal	None

Note: GF=General Fund

Municipal Impact: None**Explanation**

The bill results in a potential significant cost to the state by clarifying and formalizing a process to address the compensation of wrongfully convicted and incarcerated individuals. It is possible that clarifying and formalizing the process will result in more successful claims against the state. The Claims Commissioner can accommodate any additional examination of claims with existing resources.

Any costs to convene the advisory commission on wrongful convictions under the bill in order to monitor, evaluate and report on implementation of the public policies listed in Section 2 of the bill would be minimal.

The Out Years

There would be no fiscal impact in the out years for the advisory commission as it must report its findings and recommendations on January 7, 2009.

The potential significant cost of claims would continue in to the out years.

OLR Bill Analysis**sHB 5933*****AN ACT CONCERNING THE COMPENSATION OF WRONGFULLY CONVICTED AND INCARCERATED PERSONS.*****SUMMARY:**

This bill authorizes certain people who have been convicted in state court and sentenced to a term of imprisonment to present a claim against the state for compensation for wrongful conviction with the claims commissioner. The bill only applies to those:

1. who served all or part of their sentence;
2. who were innocent of the crime or crimes they were convicted of; and
3. whose conviction was vacated or reversed and whose case was dismissed on grounds of innocence, or on a ground consistent with innocence.

The bill requires that they follow the procedures in place for filing a claim against the state.

The bill gives the person filing the claim the burden of establishing by a preponderance of the evidence to the claims commissioner that he or she meets the bill's eligibility requirements. In addition, the bill requires the claimant to present evidence concerning damages arising from, or related to, the claimant's arrest, prosecution, conviction, and incarceration. If the claims commissioner determines that the claimant is eligible by a preponderance of the evidence, the commissioner must order the immediate payment of compensation for the wrongful incarceration.

The bill specifies factors the commissioner must consider when determining the amount of compensation and additional amounts he

may award for certain training and other specified services.

The bill requires people to file any claim based on a pre-October 1, 2008 pardon or dismissal by September 30, 2010. They must file any claim based on a pardon or dismissal that occurred on or after October 1, 2008 within two years after the pardon or dismissal.

The bill specifies that it may not be interpreted to prevent someone from pursuing any other action or remedy at law or in equity that he or she may have against the state and any political subdivision of the state and any officer, agent, employee, or official arising out of the wrongful conviction and incarceration.

The bill requires the Advisory Commission on Wrongful Convictions monitor and evaluate the implementation of (1) the procedure for the compensation of wrongfully incarcerated persons the bill establishes; (2) the pilot program to electronically record the interrogations of arrested persons; and (3) eyewitness identification procedures that, when practicable, use a double-blind administration. The bill specifies that a double-blind administration occurs when the person conducting the identification procedure is not aware of which person in the photo or live lineup is suspected as being the perpetrator of the crime.

Finally the bill requires that by January 7, 2009, the advisory commission report its findings and recommendations to the Judiciary Committee.

EFFECTIVE DATE: October 1, 2008

DAMAGES

The bill specifies that the evidence concerning damages that the claimant presents may include, but is not limited to, claims for:

1. loss of liberty and enjoyment of life, earnings and earning capacity, familial relationships, and reputation;
2. physical pain and suffering;

3. mental pain and suffering; and
4. attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration.

AMOUNT OF COMPENSATION AWARDED

In determining the amount of such compensation, the claims commissioner must consider relevant factors including, but not limited to (1) the evidence the claimant presented concerning the damages he or she suffered and (2) whether any negligence or misconduct by any officer, agent, employee, or official of the state or any political subdivision of the state contributed to such person's arrest, prosecution, conviction, or incarceration.

The bill authorizes the commissioner to pay additional amounts for any other services a wrongfully convicted person may need to facilitate his or her reintegration into the community, including such:

1. the expenses of employment, training , and counseling; and
2. tuition and fees at any constituent unit of the state system of higher education.

BACKGROUND

Claims Commissioner

Generally, the law requires those who wish to sue the state, or to present a claim against it, to file a claim with the claims commissioner unless their case falls within an exception established by law. They must file their claim with the commissioner within one year after it accrues. A claim accrues on the date the damage or injury is sustained or discovered or, in the exercise of reasonable care, should have been discovered. But, the law requires that the claim be submitted within three years after the date of the act or event that allegedly caused the damages (CGS § 4-148).

Advisory Commission on Wrongful Convictions

The chief court administrator established an advisory commission

to review any criminal or juvenile case involving a wrongful conviction and recommend reforms to lessen the likelihood of a similar wrongful conviction occurring in the future. The advisory commission consists of the chief state's attorney, the chief public defender and the victim advocate, or their designees, a representative from the Connecticut Police Chiefs Association, a representative from the Connecticut Bar Association, and representatives from one or more Connecticut law schools or institutions of higher education that offer undergraduate programs in criminal justice and forensic science (CGS § 54-102pp).

Related Law

SA 07-5, required the comptroller to pay James Calvin Tillman \$5 million as full and final settlement of all claims he has against the state; any political subdivision of the state; and any state or local officer, agent, employee, or official, arising out of, or in any way related to, his arrest, prosecution, conviction, and incarceration from 1988 to 2006 for the crimes of kidnapping and sexual assault, which he did not commit. It exempted any payment he receives under the act from the state income tax. PA 07-04, June Special Session specified that this settlement is also exempt from claims or liens for incarceration costs that the law authorizes the state to recover from inmates.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/24/2008)